

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093732
MARK RICHARDSON AND)
DARCI RICHARDSON) Date Issued: July 8, 2019
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OPINION

Representing the Parties:

For Appellants: Mark Richardson and Darci Richardson

For Respondent: Jean M. Cramer, Tax Counsel IV

Office of Tax Appeals: William J. Stafford, Tax Counsel III

T. LEUNG, Administrative Law Judge: This appeal is made pursuant to section 19324¹ of the Revenue and Taxation Code (R&TC) from the action of the Franchise Tax Board (FTB or respondent) in partially denying appellants’ claim for refund of \$17,332.94² for the 2010 taxable year.

Appellants waived their right to an oral hearing and therefore this appeal is being decided based on the written record.

ISSUE

Whether appellants’ claim for refund for the 2010 taxable year is barred by the statute of limitations.

¹ All statutory references are to the Revenue and Taxation Code operative for the 2010 taxable year.

² There is an apparent disagreement between the parties regarding the amount of the overpayment (appellants’ appeal letter indicates \$17,332.94 and FTB’s brief asserts it is \$16,562.19). Because the statute of limitations limits the amount of the overpayment that can be refunded to appellants, we need not address this issue. As discussed below, FTB already refunded the amount of \$2,716.88 (i.e., \$2,709.15 + \$7.73 in applicable interest).

FACTUAL FINDINGS

1. Appellants did not file their 2010 California income tax return until 2017. FTB received information that appellant-husband had sufficient income to require the filing of a 2010 return³ and issued a notice in 2012, demanding that appellant-husband file a return or explain why no return was required.
2. When appellant-husband did not respond to the demand, FTB issued a Notice of Proposed Assessment (NPA) based on the wage and income information received. The NPA set forth a total income of \$19,345.00, a tax of \$102.00, a late-filing penalty of \$102.00, a notice and demand (demand) penalty of \$45.75, and a filing enforcement fee of \$88.00, plus applicable interest.
3. Appellant-husband did not protest the NPA, and therefore it became final.
4. FTB received information that appellant-wife had sufficient income from a real estate transaction to require the filing of a 2010 return and issued a notice in 2012, demanding that appellant-wife file a return or explain why no return was required.
5. After receiving no response to the demand, FTB issued an NPA listing a total income of \$332,500.00, a tax of \$29,113.00, a late-filing penalty of \$7,278.25, a demand penalty of \$7,278.25, and a filing enforcement fee of \$88.00, plus applicable interest.
6. Appellant-wife did not protest the NPA and therefore it became final.
7. During 2012, FTB sent appellant-husband various collection notices, levies, and/or orders. In addition, from 2012 to 2018, FTB sent appellant-wife multiple collection notices, levies, and/or orders.
8. FTB collected \$509.08 from appellants' account(s) on December 5, 2012, and \$12,887.74 on June 15, 2013. Further, FTB transferred overpayments totaling \$1,251 from appellants' 2015 tax year account effective April 15, 2016, and overpayments totaling \$2,705 from appellants' 2016 tax year account effective April 15, 2017.
9. On December 4, 2017, FTB received a joint 2010 California Resident Income Tax Return from appellants. Appellants reported a tax liability of \$303. FTB accepted the return as filed and imposed a late-filing penalty of \$135.00, a demand penalty of \$75.75, a filing enforcement fee of \$88.00, a collection cost recovery fee of \$159.00, and a lien fee of

³ For 2010, appellant-husband's estimated income was based on employment records and/or federal Forms 1099.

\$12.00, plus applicable interest. On February 13, 2018, FTB notified appellants that FTB was treating appellants' 2010 return as a claim for refund. FTB's notice stated that although appellants had an overpayment of \$16,562.19 for the 2010 taxable year, \$13,853.04 of the overpayment was barred by the statute of limitations.

10. On January 24, 2018, FTB refunded \$2,716.88 (the \$2,705 overpayment from the 2016 tax year plus interest) to appellants.
11. Subsequently, FTB received Form 2917 (*Reasonable Cause – Individual and Fiduciary Claim for Refund*), wherein appellants asserted that in 2010 they were forced to short sale their home due to a decline in work and medical expenses following appellant-wife's automobile accident. Appellants also asserted that FTB's collections were erroneous and, as such, appellants demonstrated reasonable cause for a refund.
12. FTB informed appellants that if appellants still disagreed with FTB's determination, appellants should file an appeal with the Office of Tax Appeals.

DISCUSSION

The general statute of limitations for filing a refund claim is set forth in R&TC section 19306. Under that section, the last day to file a claim for refund is the later of:

1. Four years from the date the return was filed, if filed within the extended due date;
2. Four years from the original due date of the return, without regard to extensions; or
3. One year from the date of the overpayment.

(R&TC, § 19306.)

The taxpayers have the burden of proving that they are entitled to a refund. (*Appeal of Estate of Barbara D. Gillespie*, 2018-OTA-052P, June 13, 2018.) An untimely filing of a claim bars a refund regardless of whether the tax was allegedly collected erroneously, illegally, or wrongfully. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) The language of the statute is explicit and must be strictly construed. (*Appeal of Michael and Antha L. Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date. (*Appeal of Earl and Marion Matthiessen* (85-SBE-077) 1985 WL 15856.) It is a taxpayer's responsibility to file a claim for refund within the

timeframe prescribed by law. (*Ibid.*) Federal courts state that fixed deadlines may appear harsh because such deadlines can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

R&TC section 19316 contains the only exception to the statute of limitations under California law. This section tolls the statute of limitations during a period of “financial disability,” meaning the taxpayer was unable to manage his or her financial affairs due to a medically determinable physical or mental impairment that is expected to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316(b)(1).)

To demonstrate the existence of a financial disability, a taxpayer must submit a signed affidavit from a physician that explains the nature and duration of the taxpayer’s physical or mental impairments. (*Appeal of James C. and Florence Meek* (2006-SBE-001) 2006 WL 864344.) In addition, the taxpayer must show that he or she satisfies the strict definition of “financial disability” such that the taxpayer could not manage his or her financial affairs; it is not sufficient to show that the taxpayer could not engage in a regular occupation. (*Ibid.*) Because appellants are spouses who filed a joint return, they must show that they both suffered from a “financial disability.” (R&TC, § 19316(b)(2).)

Appellants’ 2010 return was due on April 15, 2011. Four years from that date was April 15, 2015. Therefore, appellants’ claim for refund for the 2010 taxable year, filed on December 4, 2017, is barred under the four-year statute of limitations.

As for the one-year statute of limitations, payments/credits from withholdings, estimated taxes, and refunded credits are effective as of the original due date of the return. (R&TC, § 19002; *Commissioner v. Lundy* (1996) 516 U.S. 235.) Thus, appellants’ 2015 taxable year and 2016 taxable year overpayments were treated as having been made on April 15, 2016, and April 15, 2017, respectively. Accordingly, only appellants’ 2016 taxable year overpayment of \$2,705 (deemed made on April 15, 2017) occurred within one year of appellants’ claim for refund,

which was filed on December 4, 2017.⁴ As noted above, FTB already refunded that amount plus interest (a total of \$2,716.88).

Appellants assert that in 2010 they were forced to short sale their home due to a decline in work and various medical expenses following appellant-wife's automobile accident. To demonstrate the existence of a financial disability, a taxpayer must submit a signed affidavit from a physician that explains the nature and duration of the taxpayer's physical or mental impairments. (*Appeal of James C. and Florence Meek, supra*, 2006 WL 864344.) Here, appellants did not provide an affidavit from a physician (as required) or other documents with respect to appellant-wife's automobile accident. Further, because appellants are spouses who filed a joint return, they must show that they both suffered from a "financial disability." (R&TC, § 19316(b)(2).) Appellants, however, did not assert or provide any documentation demonstrating that appellant-husband suffered from a "financial disability."

In short, the evidence submitted does not establish that appellants were financially disabled such that they were incapable of managing their financial affairs.


⁴In addition to the transfers of overpayments from the 2015 and 2016 tax years, respondent also received payments through its collection efforts. The last payment received this way was received on June 15, 2013, more than one year from appellants' claim for refund. Accordingly, all payments made through collection efforts are beyond the one-year statute of limitations.

HOLDING

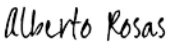
Other than the amount already refunded by FTB (i.e., \$2,716.88), appellants' claim for refund for the 2010 taxable year is barred by the statute of limitations.

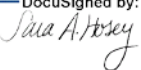
DISPOSITION

FTB's partial denial of appellants' claim for refund for the 2010 taxable year is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge